

SERVED: August 14, 1998

NTSB Order No. EA-4689

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of August, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14965
v.)	
)	
STUART D. DALE,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed from the order of Administrative Law Judge William E. Fowler, Jr., granting the Administrator's Motion for Judgment on the Pleadings.¹ By that order, the law judge affirmed the Administrator's order of revocation, dated July 9, 1997, revoking respondent's private pilot certificate, pursuant to section 61.15(a)(2) of the Federal

¹The law judge's order is attached. Respondent filed an appeal brief, to which the Administrator replied.

Aviation Regulations (FAR), 14 C.F.R. § 61.15.² We deny the appeal.

The Administrator alleged that, on or about January 23, 1995, respondent was convicted in United States District Court for the Western District of North Carolina, of conspiracy to possess with intent to distribute cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. § 846.³ In his

(..continued)

²The revocation order was filed as the complaint.

FAR section 61.15(a) provides, in pertinent part:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

* * * *

(2) Suspension or revocation of any certificate or rating issued under this part.

³The count to which respondent pleaded guilty stated, as follows:

Beginning in or about December, 1990, and continuing thereafter, until on or about April 7, 1991, in Burke County, within the Western District of North Carolina and elsewhere,

STEWART DEAN DALE

did knowingly, willfully and unlawfully combine, conspire, confederate and agree with [the other named conspirators] to unlawfully possess with intent to distribute, and distribute, a quantity of cocaine, a Schedule II narcotic controlled substance, a violation of Title 21, United States Code, Section 841(a)(1), and during the course and in furtherance of the conspiracy, a member of the conspiracy did commit or cause to be

answer, respondent admitted the conviction, but denied the Administrator's allegation that "the crime involved a plan to transport by vehicle from Florida to North Carolina at least one kilogram of cocaine, for financial gain."

Respondent argues that the law judge erred in granting the Administrator's motion, claiming that his criminal conduct did not involve large-scale commercial activity and that the Administrator did not prove he lacks the care, judgment, and responsibility required of a certificate holder. As we have stated many times before, "[a] conviction for participation in a criminal drug enterprise for economic gain warrants revocation under FAR § 61.15(a), as it demonstrates that the airman lacks the necessary care, judgment, and responsibility a certificate holder must possess." Administrator v. Hale, NTSB Order No. EA-4590 at 2-3 (1997), citing Administrator v. Piro, NTSB Order No. EA-4049 (1993).⁴ A conviction for conspiracy to distribute a

(..continued)

committed, within the Western District of North Carolina, at least one overt act in furtherance of the conspiracy, a violation of Title 21, United States Code, Section 846.

Since we have considered this information, we will treat the Administrator's motion as a Motion for Summary Judgment, rather than a Motion for Judgment on the Pleadings. We note, however, that the net effect is the same.

⁴In Hale, we affirmed the law judge's order granting summary judgment where a respondent's private pilot certificate was revoked under FAR section 61.15(a) pursuant to his conviction for conspiracy to distribute marijuana. See also Administrator v. Sardina, NTSB Order No. EA-4605 (1997)(summary judgment of revocation for violation of section 61.15(a)(2) upheld where respondent was convicted of conspiracy to distribute cocaine).

controlled substance, such as cocaine, is a sufficient indicator of participation in a criminal drug enterprise.

Granting the Administrator's motion was appropriate here. Since respondent admitted that he was convicted of conspiracy to distribute cocaine, there was no issue of material fact to be decided by the law judge.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's private pilot certificate shall begin 30 days after service of this order.⁵

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁵For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).